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November 28, 2005

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NOV 29 2005

PSC SC
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Re: Docket No: 2005-110-W/S-Order No. 2005-210 *Petition of the Office of Regulatory Staff to Request Forfeiture of the Piney Grove Utilities, Inc. Bond and to Request Authority to Petition the Circuit Court for Appointment of a Receiver*
CT&R No: 1529.001\Piney Grove - ORS

Dear Mr. Terreni:

Enclosed please find the original and eleven copies of an Application for Rehearing, in regard to the above-referenced matter.

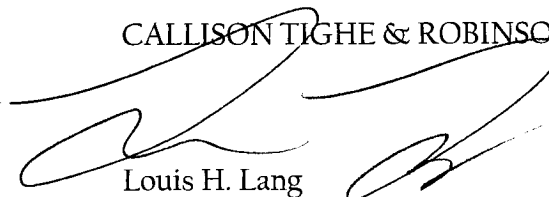
 Please file the original, with copies, and return a clocked-in copy to me in the envelope I have enclosed for your convenience.

By copy of this letter, I am providing copies of the enclosures to all parties.

With kind regards, I am

Sincerely yours,

CALLISON TIGHE & ROBINSON, LLC



Louis H. Lang

LHL/cs

Enclosures

cc: Hugh Willcox Buyck, Esq. (w/ encl.)
Benjamin P. Mustian, Esq. (w/ encl.)
Julie F. McIntyre, Esq. (w/ encl.)
Mr. D. Reece Williams, IV (w/ encl.)
1529.001\Piney Grove - ORS\Clerk PSC.008

BEFORE THE PUBLIC SERVICE COMMISSION
FOR THE STATE OF SOUTH CAROLINA

DOCKET NUMBER 2005-110-W/S

In Re: Petition of the Office of Regulatory Staff to)
Request Forfeiture of the Piney Grove)
Utilities, Inc bond and to Request Authority)
To Petition the Circuit Court for)
Appointment of a Receiver)

The Department of Health and Enviorn-)
mental Control, D. Reece Williams, IV,)
and Elizabeth Williams,)
Intervenors.)

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APPLICATION FOR REHEARING

Piney Grove Utilities, Inc. (Piney Grove) and D. Reece Williams, IV, and Elizabeth Williams (Williams), by and through their undersigned counsel and pursuant to S.C. Code Ann. § 58-5-330 (Law. Co-op. 1997), and S.C. Code of Regulations R.103-881(B) (Law. Co-op 2004), respectfully submit the following Application for Rehearing concerning the Commission Directive entered on November 8, 2005.¹

The November 8, 2005, directive granted so much of the petition of the Office of Regulatory Staff (ORS) as requested ORS authority to appoint a receiver for Piney Grove. This portion of the ORS petition was not contested by Piney Grove and the directive's finding regarding this aspect of the ORS petition is not the subject of this Application.

The November 8, 2005, directive went on, however, to "deny at this time the portion of the [ORS] Petition requesting forfeiture of the performance bond." The directive said that the "bond was given, and remains in place, to secure the performance and operations of" Piney

¹ Neither counsel for Piney Grove nor counsel for the Williams have been served with a copy of the November 8, 2005, directive.

Grove. Finally, the directive provided that “[a] duly appointed receiver, or any other appropriate party, may come back before the Commission and argue for the forfeiture on the basis of itemized expenditures or losses.”

Piney Grove and the Williams respectfully submit that these finding are in error are contrary to the law and the facts as presented in this case, and should be withdrawn.

1. The “bond was given, and remains in place, to secure the performance and operations of” Piney Grove.

This statement is in error as a matter of law and does not comport with the express language of the bond or the circumstances surrounding which the bond was given.

In a prior order of this Commission in Docket Number 2000-588-W (Order No. 2001-761) (Consolidation Order) the Commission approved the consolidation of three utilities - Eagle Point Water Company, Inc., Tickton Hall Water Company and Piney Grove - with Piedmont. However, the Commission’s approval of this consolidation was conditional. The Consolidation Order provided that the utilities to be consolidated with Piedmont must meet certain criteria or accomplish certain goals before any consolidation was finalized. These criteria or goals included Piedmont’s filing with the Commission annual reports for Eagle Point and Piney Grove, within 15 days of the Consolidation Order, Piedmont filing a petition to establish rates and charges for the Tickton Hall water system, the Consolidation Order required the sewer bond on file with the Commission for Piedmont to be increased to \$125,000, and all the water and sewer systems to be consolidated with Piedmont were required to become compliant with all applicable and pertinent DHEC regulations.

The evidence presented at the hearing of this case clearly showed that with the exception of the \$25,000.00, increase in the Piedmont (sewer) bond, none of the prerequisites to consolidation were accomplished. Further, no evidence was presented to the effect that even

though none of the prerequisites to consolidation were met, there ever was a formal consolidation of the corporations in question.

The testimony and evidence adduced in this case concerned exclusively the operation and maintenance of the water and sewer systems owned and operated by Piney Grove. Piney Grove is simply not a party - either principal or surety - to the Piedmont bond. Nor is it a successor or assign of Piedmont. Further, given the undisputed testimony that most if not all of the prerequisites to the consolidation of Piney Grove with Piedmont were never accomplished and the lack of evidence that despite this failure Piney Grove was actually consolidated with Piedmont, the actions or inactions of Piney Grove, no matter how egregious, simply cannot form a basis for the forfeiture of the Piedmont bond in the future as provided by the November 8, 2005, directive.

Further, the Williams are listed as sureties on the Piedmont bond in question. Throughout the course of the hearings, counsel for the Williams inquired of each witness whether there was any evidence supporting the contention that Piedmont owned, controlled or otherwise operated Piney Grove. Neither a single witness nor any credible evidence presented established that Piney Grove is currently owned, controlled or otherwise operated by Piedmont.

The directive appears to have concluded that as sureties of the bond, the Williams are jointly and severally liable thereunder. "[A] judgment against a principal conclusively establishes the liability of a surety as long as the surety had notice of the proceedings against the principal." *United States ex. Rel Skip Kirchdorfer, Inc. v. M.J. Kelley Corp.*, 995 F.2d 656, 661 (6th Cir.1993)(citing *Frederick v. United States*, 386 F.2d 481, 485 n. 6 (5th Cir.1967)). The Williams would respectfully submit that the evidence, having failed to establish that Piedmont controls or otherwise owns Piney Grove, the Commission does not have the jurisdiction to

maintain an action against Piedmont or the Williams. The ORS petition and evidence presented at the hearing focused solely on the activities of Piney Grove. In *SCPSC v. Colonial Construction Company*, 274 S.C. 581, 266 S.E.2d 76 (1980), the South Carolina Supreme Court considered the forfeiture of a water and sewer bond pursuant to this Commission's statutory authority. Our Supreme Court noted that "[a] surety's obligation is contractual and cannot extend beyond the terms of the bond and the intent of the parties thereto." *Id.* at 584, *citing McKenzie v. City of Florence*, 234 S.C. 428, 108 S.E.2d 825 (1959); *National Loan & Exchange Bank v. Gustafson*, 157 S.C. 221, 154 S.E. 167 (1930). In *Colonial*, the Supreme Court struck down an attempt to expand the conditions of a water and sewer bond to include "improvements" and "expansions" beyond those initially contemplated by the parties. Here, the Piedmont bond was executed by the on May 17, 2001 while the Order concerning the consolidation was not issued until August 20, 2001. Thus, the evidence presented failed to establish that the intent of the parties upon execution of the Piedmont bond included the responsibility for the operation of Piney Grove. Having failed to provide credible evidence of consolidation in accordance with the earlier Order, having failed to establish the corporate liability of Piedmont, and having failed to establish the sureties' intent in regard to Piney Grove's activities, an action against the Williams as sureties of the bond cannot be maintained.

2. "A duly appointed receiver, or other appropriate party, may come back before the Commission and argue for forfeiture on the basis of itemized expenditures or losses."

The express terms of the bond provided for forfeiture only upon a determination that Piedmont had "willfully failed to provide" adequate and sufficient service "without just cause or excuse, and that such failure has continued for an unreasonable length of time...."

The directive makes no such finding of willfulness. In fact, the directive makes no finding at all regarding the service provided by Piney Grove or Piedmont, it simply invites a return to the Commission by someone or something to “argue for forfeiture on the basis of itemized expenditures.” “A surety's obligation is contractual and cannot extend beyond the terms of the bond and the intent of the parties thereto.” *Colonial Construction Company*, 274 S.C. 581, 584, 266 S.E.2d 76, 80 (1980), citing *McKenzie v. City of Florence*, 234 S.C. 428, 108 S.E.2d 825 (1959); *National Loan & Exchange Bank v. Gustafson*, 157 S.C. 221, 154 S.E. 167 (1930). Absent a finding of willfulness, Williams and Piney Grove would respectfully submit, there can be no “return match” for argument regarding forfeiture. In addition, Williams and Piney Grove would respectfully submit that the evidenced adduced in this instance is insufficient to support a finding of “willfulness” on the part of either Piedmont or Piney Grove regarding their alleged failure to provide adequate and sufficient service for an unreasonable length of time.

3. Form of directive.

Piney Grove and the Williams would respectfully petition pursuant to R.103-836(A)(2) for clarification of the directive to the extent that the directive fails to provide specific findings of fact and conclusions nor is it clear whether the directive is a specific Order issued pursuant to R.103.804(T). Given its limited scope, it is difficult if not impossible for Piney Grove and the Williams to adequately respond to the directive. Accordingly, Piney Grove and the Williams reserve their right to further request amendment of the directive and specifically object to the directive's blanket conclusion that all evidentiary objections should be overruled. To the extent that objections were made contemporaneous with the introduction of evidence, these objections

are reiterated herein. These parties further adopt all legal arguments set forth within the previously submitted jointly proposed order.

4. Conclusion.

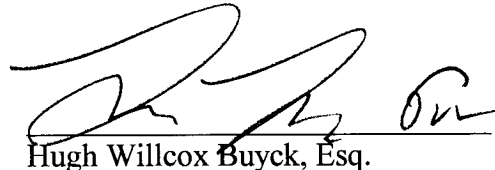
For the foregoing reasons, Piney Grove would respectfully submit that the directive should be modified or amended to conclude that the bond in question does not “secure” the performance of Piney Grove and/or the evidence adduced at the hearing of this matter was insufficient to support a finding of a willful failure to provide adequate and sufficient service for an unreasonable length of time.

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Elizabeth Williams

Columbia, S.C.
November 28, 2005

BEFORE THE PUBLIC SERVICE COMMISSION
FOR THE STATE OF SOUTH CAROLINA

DOCKET NUMBER 2005-110-W/S

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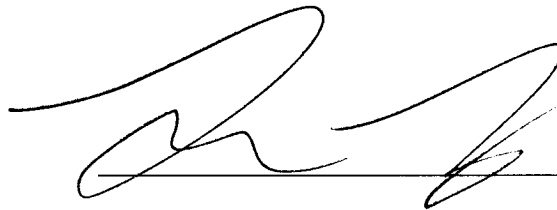
CERTIFICATE OF MAILING

The Department of Health and Enviorn-)
mental Control, D. Reece Williams, IV,)
and Elizabeth Williams,)
)
Interveners.)

I do hereby certify that I have on November 28, 2005, served a copy of the **Application for Rehearing**, in the within matter upon counsel of record, via by United States Regular Mail with appropriate postage affixed, addressed as follows:

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SCDHEC
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Columbia, SC 29201



Columbia, South Carolina
November 28, 2005